

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

JOHNATHAN WHEELER-WHICHARD,

Plaintiff,

10-CV-358S(Sr)

v.

MARK DELAURO, et al.,

Defendants.

DECISION AND ORDER

This case was referred to the undersigned by the Hon. William M. Skretny, in accordance with 28 U.S.C. § 636(b)(1), for all pretrial matters and to hear and report upon dispositive motions. Dkt. #44.

Plaintiff, an inmate of the New York State Department of Corrections and Community Supervision ("NYSDOCCS"), filed this *pro se* action on or about April 30, 2010 seeking relief pursuant to 42 U.S.C. § 1983 based upon allegations of denial of adequate medical care. Dkt. #1. The most recent amended complaint was filed on March 2, 2012 and includes hundreds of pages of medical records and grievances regarding plaintiff's medical treatment. Dkt. #45.

Currently before the Court is plaintiff's motion for a physical examination pursuant to Rule 35 of the Federal Rules of Civil Procedure. Dkt. #40. Specifically,

plaintiff seeks an order directing an endoscopy of plaintiff's "left flank area, right flank area (over by liver-lung), and a blood test and/or the necessary test for the S.T.D.'s of syphilis and gonorrhea." Dkt. #40.

Plaintiff's reliance upon Rule 35 of the Federal Rules of Civil Procedure, which permits the court to order a party whose mental or physical condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner, is misplaced. Plaintiff cannot use this procedural rule to attempt to obtain the very relief he is seeking by way of his lawsuit. Accordingly, plaintiff's motion is denied.

SO ORDERED.

DATED: Buffalo, New York
August 16, 2012

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge